



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

COLIN RECEVEUR,

)

Complainant

)

v.

)

17-FC-24

CITY OF NEW ALBANY

)

Respondent

)

ADVISORY OPINION March 20, 2017

This advisory opinion is in response to the formal complaint alleging City of New Albany (“City”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-1.5-1 et. seq. The City has responded via Mr. Shane Gibson, Esq., City Attorney. The response is enclosed for review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 6, 2017.

BACKGROUND

The formal complaint dated February 6, 2017, alleges the City violated the APRA by denying access to requested records and failing to acknowledge said request within the statutory deadline.

On January 31, 2017, the Complainant hand-delivered a public records request to the City regarding a specific piece of real property from 1970 to present. As of the date of the filing of his complaint, the Complainant had not received receipt of the request. Based upon subsequent information filed with the complaint, the City acknowledged receipt on February 13, 2017. The City appears to have produced records pursuant to the request between the end of February and mid-March.



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ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See Indiana Code § 5-14-3-1*. The City of New Albany is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the City’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

The Complainant’s original request encompassed several sets of records pertaining to an identified piece of property from 1970 to present. Records are rarely kept in this way and not all of the records (i.e. tax assessments) are kept with the City at all. Those are usually county assessor documents. The Complainant has requested the City undertake a research project associated with a piece of property in order to gather evidence for a potential lawsuit against the City. This is not the purpose of the Access to Public Records Act.

A requester may ask for a specific document or set of documents in order that they be fully informed as to the affairs of the government. However, asking for every appraisal, assessment, permit, road cut, variance application, planned unit development, zoning board meeting minutes and payment offer for the past 47 years is certainly not reasonably particular. The APRA is not a license for requests to public agencies seeking unreasonably voluminous, cumulative and burdensome information gathering. Rather, it is a mechanism for accurate and precise inquiries for documents known (or reasonably known) to exist.

The judiciary may allow for such a request in discovery but even that would be unlikely. There are limits and parameters around which requesters must frame an inquiry in order that an agency may produce records and be kept accountable. The manner in which the Complainant submitted his request does not meet those standards.

Nevertheless, it is the duty of a public agency to acknowledge a public records request. A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request is submitted and the agency does not respond to a hand-delivered request within twenty-four (24) hours of receipt, the request is deemed denied. *See Indiana Code § 5-14-3-9(b)*. A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply. If a request lacks reasonable particularity, as this one does, then the



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agency has an obligation to state the statutory reason for the denial in writing and identify the name of the public official making that determination. *See Indiana Code § 5-14-3-9, et. seq.* This was not done and therefore the City has acted contrary to the law.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the City of New Albany has acted contrary to the APRA for failing to acknowledge an Access to Public Records Request and the Complainant has failed to produce a document request which is reasonably particular.

Luke H. Britt

A handwritten signature in black ink, appearing to read "Luke H. Britt".

Public Access Counselor

Cc: Mr. Shane Gibson, Esq.